continued in partnership with the surviving partners under a deed specifically providing that the lease of the premises remained as her property. Neville J. held that he must infer that the partnership had a tenancy of the premises during its continuance. In the present case the premises are admittedly controlled premises, and the definition of tenancy in section 2 includes "any holding of premises..... by virtue whereof the relationship of landlord and tenant is created, howsoever such relationship may be described." If, following Neville J., I hold that I must infer a tenancy in the partnership during its continuance then the status of irremovability of the partners continuing in occupation must receive recognition.

The issue therefore resolves itself to this: Did the partnership agreement have the effect of substituting for the duration thereof the partners as tenants of the original landlord in place of Abasbhoy, or to create a subtenancy as between Abasbhoy and the partnership? The answer is to be found by construing the agreement as a whole to determine what in law was the true relationship between the parties and not by the label they chose to put upon it: see *Facchini* v. *Bryson*[9], and *Addiscombe Garden Estates Ltd.* v. *Crabbe*[10].

On the facts of the present case it is clear that the partnership had enjoyed exclusive possession of the entire ground floor for the purpose of the partnership business, that the partnership paid the rent, including all bills for electricity and water consumed, and that this was purely a business arrangement. Following the execution of the partnership agreement the business arrangement had prevailed as such for seven years, and in my view the conclusion is inescapable that the agreement in effect created the relationship of landlord and tenant as between Abasbhoy and the partnership, notwithstanding the label of a trust they had put upon their relationship. I do not think it necessary for me to express any opinion as to whether, upon a proper construction of the partnership agreement, the first floor of the premises now occupied by the plaintiff, was excepted from the demise of the premises, or whether "premises" in the agreement, had been used in a restricted sense, bearing in mind that the first floor was reserved for the family of Abasbhoy.

Alternatively, the effect of the agreement was to substitute the partners, in place of Abasbhoy, as tenants of the original landlord, because an underlease for the whole residue of a term is in law an assignment: *Lewis* v. *Baker*[11], in which event the plaintiff, as successor in title, cannot be in any better position than the original landlord.

Therefore, upon any view of the legal position of the defendants with regard to the premises, whether as substituted tenants of the original landlord, in place of Abasbhoy, or as subtenants of the latter, they are entitled to claim the protection of the Ordinance. The plaintiff having failed to establish that the defendants were mere licensees, the action must fail on this ground.

I should further add that it was clearly not competent for the representatives of Abasbhoy, who was only one of three joint tenants, to surrender their statutory tenancy so as to prejudice the rights of the defendants who were co-tenants.

The action is dismissed with costs.

Action dismissed.

Solicitors: *Shearn Delamore & Co.; Braddell & Ramani.*

Re ABDUL LATIFF

[R. Cr. J. (Adams J.) July 14, 1960]

[K. L. — Criminal Revision No. 16 of 1960]

Criminal Law and Procedure — Offensive weapon — Carrying of, in public place — "Otherwise than with lawful authority or for a lawful purpose" — Meaning of — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, s.6(1) and (2) — Onus of proof — Charge — Criminal Procedure Code (Cap. 6), s.173(a).

Before any person can be convicted under section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, the Court must be satisfied that the accused person found in a public place with an offensive weapon possessed it "otherwise than with lawful authority or for a lawful purpose". The words "with lawful authority", apply to members of the armed forces or others who by virtue of their occupation have to carry arms or things which could be used as an offensive weapon.

Mere possession of an offensive weapon in a public place is not an offence; possession of a weapon in a public place becomes an offence when it is for a purpose otherwise than lawful.

Section 6(2) of the Ordinance places the onus of proving the existence of a lawful purpose on the accused but the extent of proof needed to shift this onus is lighter than that which is placed on the prosecution to prove its case.

CRIMINAL REVISION.

Adams J.: This matter was referred to me by the Magistrate, Kuala Selangor.

The accused was charged under section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance (No. 43 of 1958). He pleaded guilty and the Magistrate fined him $50. In his letter putting the case up for revision the Magistrate has stated "At the time of imposing the sentence I was under the impression that the charge was one under the Minor Offences Enactment". He considers that since the charge was in fact under the Corrosive and Explosive Substances and Offensive Weapons Ordinance the sentence is inadequate.

The facts in this case are not disputed by the police and are as follows. The accused was resident in Kuala Lumpur and on the 6th April, 1960, he left Kuala Lumpur to live permanently in the Kuala Selangor district. At about 8.00 p.m. on the 6th April the accused with two others

was seen in Kuala Selangor town. They were doing nothing unlawful. They were apparently stopped by a detective who took them to the police station and on searching the baggage of the accused a dagger was found in his suitcase. The accused is as far as the police are aware of good character. They neither know nor suspect anything to his detriment and he has had no previous convictions for any criminal offence.

There appears to me to be two fatal errors in the conduct of this case. Section 6(1) of the Ordinance reads:

"Any person who in any public road or place carries or has in his possession or under his control any offensive weapon otherwise than with lawful authority or for a lawful purpose shall be guilty of an offence and on conviction be liable to imprisonment for a term not exceeding two years, and to whipping."

Before therefore any person can be convicted under this section the Court must be satisfied that an accused person found in a public place with an offensive weapon possesses it "otherwise than with lawful authority or for a lawful purpose". As I understand the words "otherwise than with lawful authority", they apply to members of the armed forces or others who by virtue of their occupation have to carry arms or things which could be used as an offensive weapon. Those words therefore do not apply in this case. What does apply in this case is that the Court must be satisfied on all the evidence that the accused was in possession of this dagger otherwise than for a lawful purpose.

It is perfectly true that section 6(2) of the Ordinance places the onus of proving the existence of a lawful purpose on the accused but the extent of proof needed to shift this onus is lighter than that which is placed on the prosecution to prove its case.

I know of no provision of law which says that offensive weapons other than firearms require licences. Mere possession of an offensive weapon in a public place is therefore not an offence. Possession in a public place only becomes an offence when it is for otherwise than for a lawful purpose. The facts of this case do not establish that the accused in fact had this weapon otherwise than for a lawful purpose.

The second error in these proceedings arises from the fact the Magistrate apparently thought he was proceeding under section 23(1) of the Minor Offences Ordinance. This section has been repealed by section 12 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance 1958. The repealed section provides that any person who not being a member of the armed forces of the Crown and certain other persons named therein goes armed with any offensive weapon in any public road shall be liable to the punishment provided in the section. The phrase "who goes armed" is very different from the phrase has in his possession or in his control any offensive weapon otherwise than for a lawful purpose and if the Magistrate thought he was acting under the Minor Offences Ordinance, the nature of the charge could not have been explained to the accused. Section 173(a) of the Criminal Procedure Code makes it mandatory that the charge be read and explained to him. Had the Magistrate explained the charge and what constituted the offence to the accused he would obviously have pleaded not guilty because he had the dagger in possession for a lawful purpose namely because he was moving his belongings from Kuala Lumpur to Kuala Selangor in a perfectly legitimate manner and the law does not make the mere possession of a dagger an offence *per se*.

The accused clearly did not understand the nature of the offence charged against him and therefore his plea of guilty was recorded without the accused knowing what constituted the offence. In these circumstances the accused was not properly convicted.

The conviction and sentence are quashed and the fine must be repaid. The dagger must also be returned to the accused.

Conviction and sentence quashed.

STATE OF TRENGGANU v. TENGKU WOK AISHAH & ORS.

[O. C. J. (Moor J.) November 3, 1949]

[Kuala Trengganu — Originating Summons No. 23 of 1949]

Land Laws — Concession — Words of limitation — Entailed interest — Surrender of land in consideration of cash and pension to grantees and "waris² keturunan zuriat kedua-nya" — Construction.

In 1907 the Ruler of Trengganu granted certain lands to Tengku Abu Bakar and his wife Tengku Khadijah as owners and to their *"waris² keturunan zuriat kedua-nya"* for ever. The two grantees surrendered the lands back to the Government of Trengganu in 1923 in consideration of $12,000 and a pension to themselves and their *"waris² keturunan zuriat kedua-nya"* for ever. There were no issues of the marriage; but there were other descendants of Tengku Abu Bakar claiming through his two daughters by another wife. The original grantees being dead the applicant contended that it was no longer under an obligation to pay the pension referred to on the ground that although there did exist descendants of Tengku Abu Bakar, the respondents, none of them was descendant of Tengku Khadijah.

Held: the words of limitation *"waris² keturunan zuriat kedua-nya"* mean "descendants of either of them" and therefore the respondents were entitled to receive the pension, being descendants of Tengku Abu Bakar.

Per curiam: If the Government of Trengganu is correct in its view of the meaning of these words (*"waris² keturunan zuriat kedua-nya"*), then it follows that in effect the Ruler in the year 1907 was granting out land for an estate which in English law would be called an estate in tail special; and touching which the old common law had been effected by the Statute *De Donis Conditionalibus*. No reason could be advanced by counsel for the Government as to why in the year 1907 a Muslim Ruler in a Muslim Malay State should be creating estates in land of such striking resemblance to a totally foreign land system grown up in feudal times.

Case referred to:—

(1) *Commissioner of Stamps* v. *Oei Tjong Swan* [1933] M.L.J. 107 at p. 109; [1933] S.S.L.R. 436; [1933] A.C. 378.